

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2270 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

HONOURABLE MR.JUSTICE K.A.PUJ

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

THE STATE OF GUJARAT - Appellant

Versus

MOHAMMAD MANZUR SIRAJ SIDDIQUI - Opponent

Appearance :

MR KT DAVE, APP for Appellant.

MR ABHAYKUMAR P SHAH for Opponent.

CORAM : HONOURABLE MR.JUSTICE
A.M.KAPADIA

and

HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/01/2007
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE K.A.PUJ)

1. The appellant - State of Gujarat has filed this appeal under Section 34 (1) (4) of the Prevention of Terrorism Act, 2002 for cancellation of bail granted to the respondent - accused by the learned designated Judge, Special Court (POTA) vide order dated 09.12.2004 passed in Criminal Misc. Application No. 3067 of 2004 in Pota Case No. 12 of 2003.
2. The brief facts giving rise to the present appeal are as under :-
3. It is the case of the prosecution that the present Respondent is the original accused No. 36 in I C.R. No.06 of 2003 registered with D.C.B. Crime Police

Station, Ahmedabad in Pota Case No. 12 of 2003. A complaint came to be registered on 04.04.2003 that a criminal conspiracy was hatched to create terror for taking revenge of the loss of life and property that were witnessed in the aftermath of the post Godhra riot. The intention was to instigate as many youths as possible so that they could be used for indulging into activities, which would terrorize section of people and thereby destabilize the nation. It is also the case of the prosecution that one of the main accused, namely, Mufti Sufian and some other accused persons had exhibited certain inflammatory material during gathering of the people of minority community and thereby as an intention of large-scale conspiracy hatched, intended to do acts which fall within the definition of Section 34 of the Prevention of Terrorism Act, 2002.

4. The present appellant was arrested from Hyderabad on a four day transit remand. In pursuance thereto, he was produced before the Special Court, Pota on 28.07.2003. The remand application was preferred

by the Investigating Agency seeking remand of 21 days which was granted upto 09.08.2004. During the course of police custody with the Investigating Agency of I C.R. No. 06 of 2003 registered with D.C.B. Crime Police Station, Ahmedabad. On 30.07.2003, the Investigating Officer of CBI had met the present respondent - accused No. 36. It was found that the present respondent accompanied Mufti Sufiyan, Sohail Khan, Kalim, Anas and Shahnawaz at Hyderabad to meet another co-accused viz. Abdul Samad. It was also found that the present respondent was aware and was party to the action of creation of safe escape passage for Kalim, Anas and Shahnawaz under false names in Jamat as if they were residents of Manmal (Rajasthan) for being sent to Bidar, Karnataka. It was also found that the respondent has received an amount of Rs.45,000/- from the original absconding accused, namely, Mufti Sufiyan. The said amount had to be handed over to Kalim, Anas and Shahnawaz upon their return. It was also found that the absconding accused Sohail Khan had given his mobile phone as well as his shoes

for safekeeping to the present respondent. It was also found during the course of investigation that the role of the present respondent was that he was in touch with other co-accused who were absconding, namely, Rasool Party. He was aware of the intention regarding conspiracy in question. During the course of police custody, the confessional statement of the present respondent was recorded under Section 32 of Pota, 2002. The present respondent was also given a passport and driving license by one of the prime accused person, namely, Mufti Sufiyan with an instruction that the same should be destroyed and burnt. The present respondent has also arranged the facility of Car for Mufti Sufiyan and Sohail Khan, when they were to leave from Secunderabad. It was, therefore, believed that the present respondent was clearly involved in the crime in question and there was prima facie case against the present respondent on having taken part in the very serious offences.

5. Mr. K. T. Dave, learned Additional Public Prosecutor appearing for the appellant – State of Gujarat has

submitted that there was enough material to indicate the prima facie involvement of the present opponent in the crime in question. The present respondent is likely to hamper and tamper the investigation and/or is likely to act in a manner which is prejudicial to the case of the prosecution. The present respondent is likely to abscond and may not be available for trial as he is facing a very serious offence. There are statements of other witnesses which clearly indicate the prima facie involvement of the present respondent. Over and above this, the present respondent's own confessional statement recorded under Section 32 of the Pota clearly indicates his involvement in commission of crime in question. He has further submitted that while releasing the present respondent on bail, the learned Special Judge, Pota has given undue weightage to the fact that there was some discrepancy in the statement recorded as B 33 and C 33 of the same witness under Sections 162 & 164 of CRPC respectively. The learned Special Judge, Pota is not right in presuming that statement of B 33 recorded under Section 162

of the Code is an exaggerated version and can be said to be bad. The learned Special Judge, Pota has given undue weightage to the fact that the same person i.e. present respondent has been cited as witness in different case by CBI. The confessional statement recorded under Section 32 of the Pota has not been retracted by the respondent when he was produced before the Chief Metropolitan Magistrate on 08.08.2003. No complaint of ill-treatment was made by the respondent when he was produced upon completion of the police custody. The present respondent has voluntarily made confession and there was no infirmity in the said piece of evidence. Bare perusal of the documents along with sequence of event as well as the other materials which have been collected by the Investigating Agency clearly indicate that there was strong prima facie case against the respondent and hence, the learned Special Judge, Pota should not have exercised the discretion in favour of the respondent by releasing him on bail. Bail granted by the learned Special Judge, Pota in favour of the present respondent is,

therefore, required to be cancelled forthwith.

6. Mr. S.V. Raju, learned advocate appearing with Mr. Abhaykumar P. Shah for the respondent has submitted that the prosecution has miserably failed to prove the prima facie involvement of the respondent in the commission of the crime. He has further submitted that on bare perusal of the confessional statement, it only reveals that he had helped some of the accused by sending them to Jamat and, there was no charge against the respondent for harbouring the accused. The present accused is cited as a witness in a separate case being POTA Case No. 10/2003 (the murder of Ex Home Minister of Gujarat). Thus, when the CBI made him a witness on the same or similar facts, it cannot be used to implicate him as an accused. The statement of B-33 does not help the prosecution case in any manner whatsoever because B-33 does not say anything before the Magistrate and whatever was said by him was a hear-say and, therefore, no reliance can be placed on such a

statement. Pursuant to the order passed by the learned Special Judge, Pota, the present respondent was released on bail and, till this date, he has not indulged in any activity which would call for the cancellation of bail granted to him by the learned Special Judge. He has, therefore, submitted that the State has not made out a case for cancellation of bail granted to the respondent and, therefore, the appeal preferred by the State for cancellation of bail does not call for any interference and the same is liable to be rejected. Mr. S.V. Raju has placed reliance on the following judgments in support of the submissions canvassed at the Bar.

(1) *(2005)3 SCC 143*

(Panchanan Mishra vs. Diganbar Mishra & Ors.)

(2) *(1995)1 SCC 349*

(Dolat Ram & Ors. vs. State of Haryana)

7. After having heard Mr. K.T. Dave, learned Additional Public Prosecutor for the appellant-State and Mr. S. V. Raju, learned Advocate for the respondent-

accused and after having carefully gone through the impugned judgment and order passed by the learned Special Judge, Pota on 09.12.2004 in Criminal Misc. Application No. 3067 of 2004 in Pota Case No. 12 of 2003, we are of the view that the learned Special Judge, Pota has rightly released the present respondent on bail and the impugned judgment and order does not call for any interference by this Court while exercising its appellate jurisdiction under Section 34 of Pota. The learned Special Judge, Pota has given cogent reasons and by a well-reasoned speaking order, released the present respondent on bail.

8. On perusal of the confessional statement, it becomes clear that the role of the respondent was very limited. He had helped some of the accused by sending them to Jamat at the behest of Mufti Sufiyan, an absconding accused. He has not been charged for harbouring the other accused. The Court has also taken into consideration the role which was attributed to the respondent in the alleged criminal

conspiracy. Thus, taking into account the role played by the respondent, we are of the view that very cogent and overwhelming circumstances are necessary for cancellation of bail granted by the learned Special Judge, Pota.

9. It is well settled by the catena of decisions rendered by the Apex Court and the High Court, that power of cancellation of bail is required to be exercised with care and circumspection, as it involves review of the decision already made. It is permitted only if by reason of supervening circumstances, it would no longer be conducive to a fair trial to allow the accused to retain his freedom during the trial. Thus, very cogent and overwhelming circumstances are necessary to cancel bail under sec. 34 of the POTA and under sec. 439(2) of the Code. The other reasons such as; (i) the accused is found tampering with evidence; (ii) when the person on bail commits similar offence or heinous offence; (iii) the prospects of the accused absconding during the trial; (iv) the misuse of privilege of bail granted to the accused –

are also required to be considered while cancelling the bail granted to the accused.

10.It is evident from the record of the case that no breach was committed by the present respondent of the terms and conditions imposed by the learned Special Judge POTA by order dated 09.12.2004. The learned Special Judge, Pota has also discussed in great detail about the role of the respondent and after going through the entire case papers granted bail and we see no reasons to interfere with the order passed by the learned Special Judge, Pota. It is also pertinent to note that earlier, State of Gujarat has preferred Criminal Appeal No. 122 of 2005 against the judgment and order of the learned Special Judge, Pota dated 16.10.2004 granting bail to other co-accused, namely, Abdul Samad Mohammad Ibrahim. The said appeal was also dismissed by this Court vide order dated 08.09.2006.

11.For the foregoing reasons, the appeal preferred by the State for the cancellation of the bail granted to

the respondent under sec. 34 of POTA read with Sec. 439(2) of CRPC, is dismissed.

[A. M. KAPADIA, J.]

[K.A. PUJ, J.]

Savariya